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*The Commonwealth of Massachusetts*  
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CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 2005-05**  
**63 Park Avenue**  
**West Springfield, Massachusetts**

**AUTOMATIC SPRINKLER APPEALS BOARD**  
**DECISION AND ORDER**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the West Springfield Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the West Springfield Knights of Columbus Home Association (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 63 Park Avenue, West Springfield, MA.

**B) Procedural History**

By written notice dated 2-28-05, the West Springfield Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 63 Park Avenue, West Springfield, Ma. Appellant filed an appeal of said order on 4-7-05. The Board held a hearing relative to this appeal on 5-18-05. Said hearing was continued until 7-6-05 and was held at the Department of Fire Services, Stow, Massachusetts.

The Appellant was represented by Attorney Sean Lenihan. Mr. Kevin Shea and Mr. Paul Cummings appeared on behalf of the Appellant. Deputy Chief Louis Lamothe appeared on behalf of the Fire Department.

Present for the Board at the 7-6-05 hearing were: Maurice M. Pilette, Chairperson, Edward G. McCann, Paul Donga, Thomas Coulombe and Stephen D. Coan. Steven Rourke was attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the enforcement action of the West Springfield Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

**D) Evidence Received**

1. Application for Appeal
2. Order of Notice from the Fire department
3. Original Notice of hearing to Appellant
4. Original Notice of hearing to Fire Department
5. Certificate of Inspection
6. Photographs A through N submitted by the Appellant
7. Certificate of inspection
8. Photographs A & B submitted by the Fire Department

**E) Subsidiary Findings of Fact**

- 1) By Notice dated 2-28-05 the West Springfield Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 63 Park Avenue, West Springfield, MA. in accordance with the provisions of M.G.L. c. 148, s.26G1/2. Said notice alleged that the Appellant's building was subject to the provisions of said s.26G1/2.
- 2) The building, which is over 100 years old, is a two floor wooden structure with a full basement used for utility and storage and an attic crawl space. The first floor contains a bar with bar stools and several tables with a capacity of 60 persons. There is a hall on the 2d floor level with a capacity of 180 persons. The 2d floor hall provides a service bar with no stools. The stated capacities are based upon a Certificate of Inspection issued by the building official on 1-26-04.
- 3) The Appellant rents out the upper hall to a private group that hosts square dances. This dance activity occurs on a routine and regular basis, approximately 50 to 60 times per year. These dance events, feature recorded music for dancing purposes. There was testimony that neither food nor alcohol is provided at these square dance events and attendance does not reach the hall's capacity.
- 4) In addition to the square dancing events and routine meetings, there are, on a typical annual basis, approximately 20 to 30 other events held within the building. According to testimony, the Appellant hosts approximately 7 supper events, an "Irish Night" and an "Italian Night".

Additionally, the Appellant routinely rents the facility out to both members and non-members for other events including several weddings, teenage “sweet sixteen” parties, birthday, anniversary and graduation parties and several “stag” parties. There are limited kitchen facilities available for such events. Food is usually brought in from the outside when food is being provided. Many of these events feature recorded music for dancing and entertainment purposes. Although some of these events feature a meal, this was not the case on many occasions. There was testimony that over 700 people purchased tickets to a recent “stag party”.

- 5) The 1<sup>st</sup> floor bar is open routinely during the week and on weekends for the service of alcoholic beverages. There was testimony indicating that organization members who visit the bar on the first floor have free access to the function hall on the second floor. However, guests in the upper hall are often prevented, by locked means, from using a stairway exit that leads to the 1<sup>st</sup> floor bar area. Additionally, it appears that members and guests routinely access the 1<sup>st</sup> floor bar area after a function hall event has concluded.
- 6) The Appellant contends that the activities that occur within the building are related to the religious objectives of the organization. Additionally, the Appellant proposes that the building occupancy is limited to “members only” and their guests and is therefore not considered a “public assembly” as referenced in the statute.

#### **F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 3) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 4) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and

discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:

- a) No theatrical stage accessories other than raised platform;
- b) Low lighting levels;
- c) Entertainment by a live band or recorded music generating above-normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 5) Based upon the testimony at the hearing, this building is used for many different types of events. This particular facility, as currently used, is clearly routinely used for dancehall purposes and is regularly used for “A-2 like” activities” described in this Board’s memorandum dated 1-10-05. Said memorandum is attached hereto and incorporated by reference. Examples of activities included numerous square dancing events and the use of the facility for stag parties, sweet sixteen dances and birthday parties. The majority of these events feature live or recorded music for dancing purposes. Testimony indicated that some of these events involved incidents of concentrated occupancy, impeded and/or blocked egress and a lack of control over attendance. During square dance events a representative or manager is not usually on site. Many of these particular events did not feature a meal and the entertainment was the main attraction.
- 6) In a recent decision this Board indicated that under certain circumstances, a place of assembly which provides facilities for organized private dining events may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s.26G1/2, notwithstanding the incidental existence of live band or recorded music. The existence of the following characteristics in certain facilities is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics, which must all be present, are as follows:

- 1. The facility is used for events that feature a meal as the primary attraction.

2. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
3. Each event has a definite starting and ending time.
4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
5. There are no significantly low lighting levels, and
6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6<sup>th</sup> Edition), table: 780 CMR 1008.1.2.
7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Based upon the existing characteristics of the Appellant’s building, as presented at the hearing and determined by this Board, this particular establishment clearly did not present the specific characteristics that are needed to be considered a facility used for “organized private dining events”.

- 7) The Appellant’s argument that the use of this building is related to the religious objectives of the organization has no factual basis. Although there may be some events that occur before or after church services, there is no factual basis to conclude that many of the events that occur in this building have any religious connection. Additionally, Appellant’s position that the building is not a “public assembly” since the occupancy is limited to members and their guests, again has no factual merit. There was ample testimony to conclude that organization members, as well as non-members alike, routinely rent out and/or attend events at this location. Furthermore, the Appellant failed to present any legal precedent to support a determination that the establishment is exempt from the sprinkler provisions based upon religious grounds or based upon a “members only” exemption. However, to the contrary, the Board notes that the State Building Code (6<sup>th</sup> Edition), in section 780 CMR 303.1, dealing generally with Assembly Use Groups, clearly states that such Assembly Use Groups includes: “All structures which are designed or occupied for the gathering together of persons for the purposes such as civic, social or religious functions...”.

#### **G) Decision and Order**

Based upon the aforementioned reasoning and the evidence presented at the hearing, the Board unanimously upholds the Order of the West Springfield Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 and further orders the installation in accordance with statutory timeline:

1. The submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and
2. Complete installation within 3 years of the effective date of the act (by November 15, 2007).

**H) Vote of the Board**

Maurice Pilette, (Chairperson)	In favor
Paul Donga	In favor
Edward G. McCann	In favor
Stephen D. Coan	In favor
Thomas Coulombe	In favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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Maurice Pilette, P.E.. Chairman

Dated: August 3, 2005

**A copy of this Decision and Order was forwarded by certified mail, return receipt requested, to Dennis P. Powers, Esquire, Katz, Argenio & Powers, P.C., 1380 Main Street, Suite 302, Springfield, MA. 01103 and by 1<sup>st</sup> class mail, postage prepaid, to: Deputy Chief Louis LaMothe, West Springfield Fire Department, 44 Van Deene Avenue, West Springfield, MA. 01089.**